IN THE

Supreme Court of the United States

October Term, 1964

Number 226

BEN W. FORTSON, JR., as Secretary of State of the State of Georgia,

Petitioner,

vs.

JAMES W. DORSEY, DAN I. MacINTYRE, III, and JAMES EDWARD MANGET,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, Before Judgment

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

James W. Dorsey, Dan I. MacIntyre, III and James Edward Manget, Respondents in the captioned case, hereby file this reply to the Petition for a Writ of

Certiorari to the United States Court of Appeals for the Fifth Circuit, which was filed by Ben W. Fortson, Jr., Secretary of State of the State of Georgia.

The case that this Court is being asked to review on certiorari is identical to and is the same case now before this Court on direct appeal from a Three Judge Court convened in the Northern District of Georgia. The case now before the Court on direct appeal is docketed as Number 1213 of the October Term, 1963 and is styled *Ben W. Fortson, Jr., as Secretary of State of the State of Georgia, Appellant,* vs. *James W. Dorsey, Dan I. MacIntyre, III, and James Edward Manget, Appellees.*

The petitioner herein has set forth in his petition for a writ of certiorari that he is proceeding both by direct appeal and by way of appeal through the Court of Appeals in order to assure that he has chosen the proper avenue to have his case heard by this Honorable Court. The respondents herein have not challenged the jurisdiction of this Court in the action now before this Court on direct appeal, but rather have appeared and have filed with the Court a motion to affirm the judgment of the lower court.

The respondents herein have filed a motion in the United States Court of Appeals for the Fifth Circuit to dismiss the action pending in that Court on the ground that that Court has no jurisdiction over this appeal. This petition for a writ of certiorari is brought before a judgment.

The respondents herein only desire to point out to this Court that this case is presently pending before this Court and that the decision of this Court in case number 1213 will dispose of the issues and will control the case

pending in the Court of Appeals for the Fifth Circuit, if said case is properly before that Court. If the petition for a writ of certiorari is granted, the effect would be to have one case involving the same parties pending in two separate cases before this Honorable Court. There is no legal or equitable reason to warrant the granting of the petition.

The respondents herein do not intend to file a brief of law in this case, but refer the Court to the Motion to Affirm with brief of law filed in case number 1213 of the October Term, 1963 involving the same parties herein.

WHEREFORE, the Respondents respectfully pray that the petition for writ of certiorari be denied and that a writ of certiorari not be granted, but that the Court dispose of this case and the direct appeal presently pending before this Court.

Respectfully submitted,

1501 Bank of Georgia Bldg.
Atlanta, Georgia 30303
522-1188

WILLIAM C. O'KELLEY

501 Bank of Georgia Bldg.
Atlanta, Georgia 30303
521-3591

EDWIN F. HUNT

C. & S. National Bank Bldg.
Atlanta, Georgia 30303
522-5951

CHARLES A. MOYE, JR.

Attorneys for Respondents